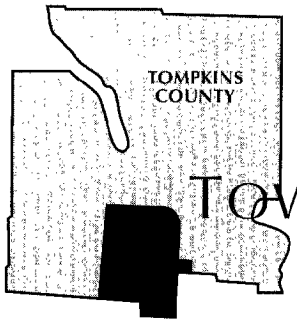
R03-OW-2010-0736



TOWN OF DANBY - TOMPKINS COUNTY
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November 1, 2010
Water Docket
Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

NOV 08 2010

Dear Administrator Jackson, et. al.:

Transmitted herewith are the Danby Town Board's comments with respect to the Draft Chesapeake Bay TMDL Allocations.

The Town Board recognizes the need to manage and protect the quality of our water resources. To that purpose the Town recently adopted stormwater regulations, and established a special Task Force to consider further options. As a result the Town is exploring an enhanced program to manage runoff and stormwater in an enhanced drainage management scheme. Rural highways, through ditches and culverts, are major conduits of drainage waters from surrounding lands and the highways themselves. Research at Cornell University has established that the amount of nutrients and sediment conveyed by highway drainage accounts for the major part of the total runoff from land.

The Town is currently working with other partners in the Susquehanna River basin to create an innovative and comprehensive program to control this dominant single source of contaminants to our surface waters. These partners include the Tompkins County Soil and Water Conservation District and the Upper Susquehanna Coalition.

Rural highways tend to be an orphan in watershed management programs. We wish to remedy that serious gap. Our ability to do so will obviously depend upon having adequate resources to do so. We trust that the evolution of the Chesapeake Bay Watershed Program will facilitate the ability to access needed resources to address a singly most important source of nutrients and sediment as we collectively work towards the remediation on the Chesapeake Bay.

Sincerely,
The Town Board of the Town of Danby:

FREDRIC DIETRICH
Town Supervisor

LESLIE CONNORS
Councilperson

KATHY HALTON
Councilperson

DAN KLEIN
Councilperson

DYLAN RACE
Councilperson

NOV 01 2010

COMMENTS ON EPA DRAFT CHESAPEAKE BAY TMDL BY THE TOWN OF DANBY, NEW YORK

Water Docket
Environmental Protection Agency
Mail code: 2822T
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Electronic submission: www.regulations.gov. Docket ID No. EPA-R03-OW-2010-0736

Comments due by November 8, 2010

Concerns of the Town of Danby, New York, with the Draft Chesapeake Bay TMDL Allocations

Overview

The town of Danby supports EPA's goal of restoring the Chesapeake Bay and its network. Indeed, Danby has been working aggressively at the local level to decrease nitrogen, phosphorous, and sediment loading from both point and nonpoint sources feeding the watershed. Danby desires to continue work to reduce these levels.

However, we are concerned that the TMDL allocations as applied to New York are impractical, unrealistic, and unnecessary. The draft TMDL, with its top-down imposition of nutrient loads and lack of attention to key pollutant sources in rural areas, does not reflect the spirit of cooperation with stakeholder groups that has been emphasized by the EPA and was central to the collaboration agreed to by EPA and the other Watershed Partners in creating a plan to restore the Bay. More important, the plan does not adequately address important sources of pollution in rural areas like Danby and therefore will be ineffective in reducing these nutrient loads.

The Town of Danby

Danby is a town of some 3,500 people, located in a hilly rural area in south central Tompkins County, in the Finger Lakes region of central New York. Approximately half the land included within the town lies within the Susquehanna watershed. The town's land area is 53.6 square miles, one-quarter of which is located within the Danby State Forest, which dominates the southern portion of the town. Around 73 percent of the town is forested or undeveloped.

Originally heavily agricultural, Danby still has many small farms. Of the 34,404 acres in Danby, around 3,348 were involved in farm operations in 2001;[1] probably fewer are at present. Those farms included eight livestock operations, two dairy farms, and two grain farms, among other uses. Eleven of the farms worked between 100 and 500 acres. The 2001 Agricultural Profile Narrative published by the Tompkins County Cooperative Extension reported that "Although agriculture exists to a smaller extent in Danby than in other parts of the county, it remains a viable part-time enterprise for many of the town's farmers."[2]

In the latter part of the 20th century, the town has also developed as a residential suburb to the college town of Ithaca, NY; there is also some light industrial growth. There is no municipal sewer system, and waste disposal is carried out by individual septic systems. Apart from a small public water system serving around 150 homes, water is derived from private wells. Danby is connected by a network of roads, both paved and unpaved, and the main system for stormwater runoff is made up of roadside ditches.

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[1] These statistics are taken from the Tompkins County Cooperative Extension 2001 Agricultural Profile Narrative.
[2] *Id.*

Danby has a road network of 108 miles, of which 91 miles are year-round paved or gravel roads, and 17 are seasonal roads of natural soil. The rolling topography of the region allows for quick runoff of stormwater during rain and snowmelt, causing sediment and other pollutants to move quickly to the streams that feed the Susquehanna River.

Danby and Current Water Quality in New York State

New York's current water quality is the highest of any of the Watershed Partners, after years of implementing programs at the local level to reduce nitrogen, phosphorus, and sediment loading.[3] Of particular relevance to Danby is the progress made in addressing loading from agricultural nonpoint sources.[4] New York's significant reductions and high water quality reflect a good-faith effort on the part of small towns like Danby, which exhibits the geography and demography of much of New York's portion of the Bay watershed. We are concerned that the draft TMDL does not actually "represent[ ] the product of decades of monitoring and model development, and years of focused dialogue and analysis among EPA, our state partners, and numerous stakeholders."[5] More specifically, we are concerned that the draft TMDL neglects to consider innovative methods to address the nutrient levels in rural areas like Danby. Danby has in fact been developing a proposal aimed at doing so, one that could be a model for other areas, but needs financial support from the EPA to implement it.

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[3] *See* NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, NEW YORK DRAFT PHASE I WATERSHED IMPLEMENTATION PLAN 6 (Sept. 1, 2010) [hereinafter *WIP I*].
[4] *See* UPPER SUSQUEHANNA COALITION, http://www.u-s-c.org/html/index.htm (last visited Oct. 20, 2010).
[5] *See id.* at 10-1.

Proposed TMDL Allocations for New York

The draft TMDL allocations for New York set unreasonable targets. More than one-third of the land in Tompkins County, where Danby sits, is devoted to agriculture.[6] If the draft TMDL allocations remain as currently proposed, the majority of farms in Danby and towns like Danby (of which there are many in New York's portion of the Bay Watershed) would likely be forced to reduce further their nonpoint source contributions, even though the water quality at the point where it leaves the state is very high. The cost of compliance could effectively put these farms out of business, although they neither play a major role in pollution of the Chesapeake Bay nor derive as much benefit from it as the states actually on the Bay derive.

The proposed allocations also put a stranglehold on future economic growth because permits would be withheld for failure to comply with the TMDLs. Given that the allocations are impractical to achieve, towns like Danby would be unable to experience agricultural or non-agricultural business growth that might result in increased loading from point or nonpoint sources.[7] Towns will be forced to come up with progressively more creative measures to reduce nitrogen, phosphorus, and sediment outputs. New York has already been implementing such strategies for years. Danby has been and is continuing these efforts, but additional funding will be necessary to effect any further changes. The town is nonetheless enthusiastic about attempting to come up with a program that will have that effect.

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[6] *See* TOMPKINS COUNTY, COUNTY SUMMARY HIGHLIGHTS: 2007, tbl. 1 (2007).

[7] *See Draft TMDL* at app. S-2 (thus, since New York would not even meet its initial allocations, any additional loading would not even qualify as "new or increased loading" defined in the draft TMDL as occurring "*after the point in time the source begins meeting its WLA or LA.*" (emphasis in original)).

Danby's Innovative Proposal for Stormwater Management

Because management of stormwater runoff from roads and ditches is central to reduction of nutrient levels in Danby, the town has been focusing on this area. To that purpose, the town recently adopted stormwater regulations. This is a progressive environmental initiative. The town has also established a special task force to consider further options. As a result, the town is exploring the development of a model program to manage runoff and stormwater in an enhanced drainage management scheme.

Rural highways, through ditches and culverts, are major conduits of drainage waters from surrounding lands and the highways themselves. Research at Cornell University has established that the amount of nutrients and sediment conveyed by highway drainage accounts for the major part of the total runoff from land. Danby is currently working with other partners in the Susquehanna River basin to create an innovative and comprehensive program to control this dominant single source of contaminants to our surface waters. These partners include the neighboring towns of Caroline and Newfield, the Tompkins County Soil and Water Conservation District, the Cornell Law School Water Law Clinic, and the Upper Susquehanna Coalition.

The plan is to develop sound recommendations for stormwater management within this rural area, ones based on approaches that will reduce sediment and other pollutants to the Bay while also protecting and enhancing local water resources yet not causing undue financial hardship to already strapped town budgets. We intend to consult with faculty at the Department of Natural Resources at the Cornell University College of Agriculture and Life Sciences, who have done extensive studies on pollutant transport in ditches following routine maintenance, and with the Cornell Local Roads Program, with

respect to training highway departments once appropriate practices are identified. Impervious surfaces will be identified in each town, and actions will be recommended to remediate pollutant transport from those surfaces.

The overall goal is to develop an approach that focuses on several pollution sources particular to rural areas in New York State for use as a model. The focus will be on (1) road ditching practices, especially those on the many unpaved town roads, including logging and other access and back roads, (2) the reduction of runoff from impervious surfaces, and (3) a study of the effectiveness of stormwater controls in achieving significant reductions in the loads of nutrients, sediment and other pollutants delivered to streams and other waterbodies.

Rural highways tend to be an orphan in watershed management programs. We wish to remedy that serious gap by developing a model program that can be used in other rural areas in the watershed as well. Our ability to do so will obviously depend upon having adequate resources to do so. We trust that the evolution of the Chesapeake Bay Watershed Program will facilitate the ability to access needed resources to address a singly most important source of nutrients and sediment as we collectively work towards remediation of the Chesapeake Bay.

A Note of Caution About Future Nutrient Loads

Finally, the town of Danby respectfully notes that the types of reduction in nutrient levels envisaged by the EPA and by the Danby proposal will be impossible to achieve if gas drilling by hydrofracturing, currently subject to a New York State moratorium, begins in the area. Experience from other states shows that natural gas drilling in the Marcellus Shale has seriously damaged roads in the region of the drilling.

Gas drilling trucks carrying extremely heavy loads of over 80,000 pounds make an estimated 890-1,350 trips per well. The vast majority of town and county roads are not designed to withstand such traffic, leading to road destruction and failure. Road damage in other parts of the country where gas drilling is occurring is well documented. For example, of the 1,300 miles of roads in Bradford County, PA, immediately adjacent to New York State in the Chesapeake Bay Watershed,1,100 miles have been impaired due to gas drilling trucks. Field observations consistently demonstrate that the large-scale industrial activities associated with gas drilling, the construction of multiple pipeline rights of way, and the inordinately heavy traffic on rural roads and back roads together create incalculable loads of sediment and pollutants that are conveyed to streams in runoff. To continue to ignore a consequence of this magnitude for the TMDLs is irresponsible and discredits the integrity of the TMDL program.